

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Jayne B.
Khalifa, Acting Commissioner,
Department of Human Rights,

Complainant.

DISMISSAL ORDER

V.

Gruys, Johnson & Associates,

Respondent.

The above-captioned matter is pending before the undersigned Administrative Law Judge pursuant to a Complaint and a Notice and Order for Hearing which were filed with the Office of Administrative Hearings on August 20, 1986.

Carl M. Warren, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, has appeared on behalf of the Complainant. Robert W. Kettering, Jr., and Katherine L. MacKinnon, Arthur, Chapman, Michaelson & McDonough, P.A., Attorneys at Law, The Tallmadge Building, 1219 Marquette Avenue, Minneapolis, Minnesota 55403, have appeared on behalf of the Respondent.

On October 21, 1986, the Respondent filed a Motion for Summary Disposition on the grounds that the discriminatory acts alleged in the Complainant's Complaint are not actionable under the Minnesota Human Rights Act and that its Complaint should, therefore, be dismissed. The Complainant responded to the Respondent's Motion and arguments on December 1, 1986. The record closed at that time.

Based upon all the files, records and proceedings herein, and for the reasons set forth in the Memorandum attached hereto,

IT IS HEREBY ORDERED: That since the Complainant's Complaint does not allege any discriminatory acts prohibited by the Minnesota Human Rights Act, its Complaint and the underlying charge should be and they are DISMISSED.

Dated this day of December, 1986.

JON L. LUNDE
Administrative Law Judge

Reported: Written Arguments and Briefs

MEMORANDUM

The Complaint in this matter alleges that the Respondent discriminated against the Charging Party on the basis of a disability contrary to the provisions of Minn. Stat. 363.03, subd. 2(2)(b) and (c) (1984) because the Respondent discharged the Charging Party from his employment on September 16, 1981 as a result of the Charging Party's failure to complete an in-patient treatment program for chemical use or dependency.

For purposes of this Motion, the parties agree to the following facts: That the Charging Party was employed by the Respondent accounting firm as a senior auditor from about November 24, 1980 to September 16, 1981. On approximately August 16, 1981, the Respondent's representatives placed the Charging Party on an involuntary leave of absence due to his job performance. From approximately late April of 1981 through August of 1981, the Charging Party's consumption of alcohol significantly interfered with his ability to perform his job and was affecting his personality and his work. Efforts were made by the Respondent's representatives to place the Charging Party in an alcoholism treatment program and they advised the Charging Party that he would have to commence, maintain and complete an in-patient treatment program within thirty (30) days following August 16, 1981. During the following thirty-day period, the Charging Party did not attend an in-patient treatment program. Instead, he alleges that he participated in an Alcoholics Anonymous group and a Viet Nam Veterans support group on an out-patient basis. Consequently, on September 16, 1981, the Charging Party's employment was terminated because he had not completed the in-patient treatment program mandated by the Respondent's representatives. As a result of his dismissal, the Charging Party filed a charge of discrimination against the Respondent with the Department, and after an investigation and unsuccessful conciliation, the Department commenced this action.

The Respondent's Motion is based on the argument that the Charging Party's alcoholism was not a disability which was protected under the Minnesota Human Rights Act in 1981 and that the Complaint, which treats the Charging Party's alcoholism as a disability, should, therefore, be dismissed. The Complainant argues, on the other hand, that alcoholism was a protected disability under the pre-1983 version of the Minnesota Human Rights Act.

In *Gruening v. Pinotti*, 392 N.W.2d 670, 674 (Minn. App. 1986), the Minnesota Court of Appeals dismissed a charge of discrimination arising prior to the 1983 amendments to the Minnesota Human Rights Act which was based on the theory that the employer had violated the Act by terminating an employee's employment due to his alcoholism. In reaching its decision, the court

concluded that alcoholism was not a disability prior to the 1983 amendments to the Minnesota Human Rights Act. Since the charges in this case are based upon the theory that alcoholism was a protected condition under the Human Rights Act, contrary to the holding in *Gruening v. Pinotti*, the Complaint should be dismissed. Alcoholism was not a protected disability at the time the Charging Party was discharged from his employment.

The Complainant's brief reviews the legislative history of the Minnesota Human Rights Act and the Complainant argues that disability was a protected disability in 1981 and that the 1983 amendments to the Human Rights Act

clarified, but did not expand or alter, the scope of the statute, and that the

Administrative Law Judge should, therefore, reach a different conclusion than

that reached by the Court of Appeals. That would not be appropriate.

Administrative Law Judges are required to apply the law enunciated by the courts. See, 73 C.J.S., Public Administrative Law and Procedure, 33, p. 423. The decisions of intermediate appellate courts must be followed under

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Under these principles, the Administrative Law Judge is persuaded that he is bound by the decision in Gruening v. Pinotti until such time as that decision

is reversed and that he should not re-examine the issue or reach a contrary conclusion in this case. Since the Complaint is based upon a construction of

the Human Rights Act that was rejected in Gruening v. Pinotti, the Complaint must be dismissed.

J.L.L.